

STATE OF NEW YORK
SUPREME COURT: COUNTY OF ERIE

ERIC C. MARTIN,

Plaintiff,

NOTICE OF MOTION

v.

Index No: 808523/2021

TOWN OF TONAWANDA
POLICE DEPARTMENT
o/b/o the TOWN OF TONAWANDA,

SPEEDWAY, LLC,

JOHN DOE #1, 2, 3, 4, 5, 6, 7, 8
as employees of Defendant,
TOWN OF TONAWANDA
POLICE DEPARTMENT,

Defendants.

MOTION MADE BY:

John Feroletto, Esq., attorney for Plaintiff.

**DATE, TIME AND
OF MOTION:**

On September 1, 2022 at 11:00 AM before the Hon.
Catherine Nugent-Panepinto, J.S.C., 92 Franklin
Steet, Part 3, Buffalo, New York 14202.

SUPPORTING PAPERS:

Affirmation of John Feroletto, Esq., dated July 27,
2022 with attached exhibits.

RELIEF REQUESTED:

An Order compelling Defendant to produce three
parties be made available for depositions pursuant
to CPLR §§ 3101(a), 3102(a), CPLR 3106(a), and
CPLR 3124.

Pursuant to CPLR §2214(b), answering affidavits, if any, are required to be served upon the undersigned at least seven days before the return date of this motion.

DATED: July 28, 2022
Buffalo, New York



JOHN P. FEROLETO, ESQ.
FEROLETO LAW

Attorneys for Plaintiffs
438 Main Street, Suite 910
Buffalo, New York 14202
Telephone: (716) 854-0700

TO: **PAUL G. JOYCE, ESQ.**
MARC S. SMITH, ESQ.
COLUCCI & GALLAHER, P.C.
Attorneys for Defendant The Town of Tonawanda
Police Department o/b/o The Town of Tonawanda
2000 Liberty Building
424 Main Street
Buffalo, New York 14202
Telephone: (716) 853-4080

CC: **BRITTANY L. HANNAH, ESQ.**
SUGARMAN LAW FIRM, LLP
Attorneys for Speedway LLC
211 West Jefferson Street, Suite 20
Syracuse, New York 13202
Telephone: (315) 474-2943

STATE OF NEW YORK
SUPREME COURT: COUNTY OF ERIE

ERIC C. MARTIN,

Plaintiff,

**AFFIRMATION IN
SUPPORT OF MOTION TO
COMPEL**

v.

Index No: 808523/2021

TOWN OF TONAWANDA
POLICE DEPARTMENT
o/b/o the TOWN OF TONAWANDA,

SPEEDWAY, LLC,

JOHN DOE #1, 2, 3, 4, 5, 6, 7, 8
as employees of Defendant,
TOWN OF TONAWANDA
POLICE DEPARTMENT,

Defendants.

JOHN P. FEROLETO., ESQ., hereby states and affirms under the penalties
of perjury as follows:

1. Your Affiant is an attorney duly licensed in the State of New York and
represents the Plaintiff Eric Martin in the above-captioned matter. As such, I am
fully familiar with the facts and circumstances herein.

2. This Affirmation is submitted in support of Plaintiff, Eric Martin's
motion to compel depositions pursuant to CPLR §§ 3101(a), 3102(a), CPLR 3106(a),
and CPLR 3124.

PROCEDURAL HISTORY

3. Plaintiff served Notice of Claim on the Town of Tonawanda on October 1, 2020 by way of Certified Mail Return Receipt Requested. Your Affiant received a post office receipt signed by Brian Mayo on **October 2, 2020** and two (2) post office receipts signed by M. Greco on **October 3, 2020** as [Docket No. 14](#).

4. Plaintiff then served an Amended Notice of Claim on the Town of Tonawanda on **October 22, 2020** by way of Certified Mail Return Receipt Requested. Your Affiant received three (3) post office receipts signed by M. Greco on **October 24, 2020**. [Dkt No. 14](#).

5. Mr. Martin testified **December 7, 2020** pursuant to 50-H of the General Municipal Law and Rules. [Docket No. 15](#).

6. Action was commenced **June 29, 2021** by way of filing a Summons and Complaint within the New York State Courts Electronic Filing (“NYSCEF”) as [Docket No. 1](#). Issue was joined by Defendant, SPEEDWAY LLC, (Speedway) **July 21, 2021**, [Docket No. 7](#). Issue was joined by Defendant, TOWN OF TONAWANDA, o/b/o the TOWN of TONAWANDA POLICE DEPARTMENT (TPD) **August 2, 2021**, [Docket No. 8](#). Defendant, TOWN OF TONAWANDA, filed its answer to cross claims of Co-Defendants on **September 10, 2021** as [Docket No. 9](#)

DISCOVERY DISPUTE

7. Defense counsel and I have communicated on multiple occasions, including June 23, 2022; June 27, 2022; June 28, 2022; July 8, 2022; July 18, 2022;

July 19, 2022; July 21, 2022; and, additionally by telephone; in an attempt to schedule depositions. *See Correspondence re: Depositions* annexed hereto as “**Exhibit 1**”. We additionally attempted to resolve this issue with Confidential Law Clerk Kristen Wolf on July 18, 2022.

8. Defendant Tonawanda’s Attorney, Paul Joyce, refuses to schedule depositions, arguing all John Doe Defendants must be named as Defendants in the action before he will agree to depositions. Ex. 1.

9. The problem with Mr. Joyce’s refusal is that your deponent needs depositions to include and rule out specific TPD personnel as defendants, as it is likely that all TPD personnel involved in the arrest of Eric Martin need not be named as defendants in this action.

10. Plaintiff seeks the depositions of Officer Brian Valint, who told Plaintiff Eric Martin that he was in possession of a stolen lottery ticket; the TPD employee who authorized the strip search of Eric Martin; and Captain J. Haug, head of the Records and Communications Bureau.

11. Attorney Joyce refuses to schedule depositions.

12. Plaintiff, Eric Martin has previously testified at a December 20, 2020 50-H hearing and is available to testify at deposition before the depositions TPD personnel. *See* Martin 50-H Transcript, December 7, 2020 as [Docket No. 15](#).

13. Mr. Joyce argues he does not represent TPD personnel Officer Valint, Captain Haug, and the individual who authorized the strip search of Eric Martin.

To move this case forward, your deponent offered to Mr. Joyce that plaintiff would serve non-party witness subpoenas on the three above identified TPD personnel. However, Mr. Joyce advises he will bring a motion to quash non-party deposition subpoenas if I seek them.

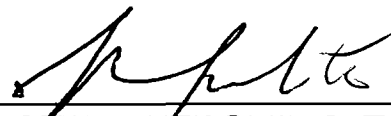
**DEPOSITIONS ARE NECESSARY IN DETERMINING WHICH
PARTIES SHOULD BE NAMED AS JOHN DOE'S**

14. With factual information gained from the depositions, your affiant hopes to be in a position to exclude a number of TPD personnel as Defendants.

15. Your deponent requests an Order that Defendant TPD produce Officer Brian Valint, the agent/officer of the TPD who ordered the strip search of Eric Martin, and Records and Communications Bureau Capt. J. Haug within 20 days of the date of this motion.

WHEREFORE, Plaintiff requests an order directing the depositions of the above names TPD personnel within 20 days of the date this motion is set to be heard, together with such other and further relief as this Court deem just and proper.

DATED: July 26, 2022
Buffalo, New York


JOHN P. FEROLETO, ESQ.
FEROLETO LAW
Attorneys for Plaintiffs
438 Main Street, Suite 910
Buffalo, New York 14202
Telephone: (716) 854-0700

TO: PAUL G. JOYCE, ESQ.
MARC S. SMITH, ESQ.
COLUCCI & GALLAHER, P.C.
Attorneys for Defendant The Town of Tonawanda
Police Department o/b/o The Town of Tonawanda
2000 Liberty Building
424 Main Street
Buffalo, New York 14202
Telephone: (716) 853-4080

CC: BRITTANY L. HANNAH, ESQ.
SUGARMAN LAW FIRM, LLP
Attorneys for Speedway LLC
211 West Jefferson Street, Suite 20
Syracuse, New York 13202
Telephone: (315) 474-2943

FEROLETOLAW

Cheryl Robinson <cheryl.robinson@feroletolaw.com>

Martin-TPD

4 messages

John Feroletto <john.feroletto@feroletolaw.com>

Thu, Jun 23, 2022 at 1:09 PM

To: "Paul G. Joyce" <pjoyce@colucci-gallagher.com>, Brittany Hannah <bhannah@sugarmanlaw.com>, Jill Wnek <jill.wnek@feroletolaw.com>, Cheryl Robinson <cheryl.robinson@feroletolaw.com>, John Feroletto <john.feroletto@feroletolaw.com>

Paul, you will shortly receive a copy of our updated proposed order, based upon Justice Panepinto's ruling as provided in her June 22, 2022 email. Please review as I would like to have the Order submitted Monday, June 27.

In your discovery responses at Bates page 029 of the O – 35 cellblock security and prisoner processing procedures, the revised date at the top of the document is 3/26/19. However, at Bates 030 Subsection J – strip searches, the revised date is 5/11/21. Please provide the document addressing strip searches in effect during June, 2020.

Please produce Lieut. Valint and the individual who authorized the strip search of Eric Martin for deposition July 29 at 10 AM and 2 PM, respectively at my office. If you would like to depose Mr. Martin before July 29, we will make him available before July 27, 2022.

.Thank you for your cooperation.

John Feroletto

438 Main Street, Suite 910

Buffalo, NY 14202

716-854-0700

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Brittany Hannah <bhannah@sugarmanlaw.com>

Thu, Jun 23, 2022 at 1:18 PM

To: John Feroletto <john.feroletto@feroletolaw.com>

Cc: "Paul G. Joyce" <PJoyce@colucci-gallagher.com>, Jill Wnek <jill.wnek@feroletolaw.com>, Cheryl Robinson <cheryl.robinson@feroletolaw.com>

Hello John,

I am not available on July 29 for depositions in this case. Unless you are discontinuing the action against Speedway, which I doubt, I need to be present for the depositions. Please circulate proposed dates for the depositions so that we can all agree upon mutually agreeable dates. Thank you!

Regards,
Brittany

Brittany L. Hannah, Esq.
Sugarman Law Firm, LLP
(315) 362-8942

On Jun 23, 2022, at 1:09 PM, John Feroletto <john.feroletto@feroletolaw.com> wrote:

[Quoted text hidden]

Jill Wnek <jill.wnek@feroletolaw.com>

Thu, Jun 23, 2022 at 1:18 PM

To: John Feroletto <john.feroletto@feroletolaw.com>

Cc: "Paul G. Joyce" <pjoyce@colucci-gallaher.com>, Brittany Hannah <bhannah@sugarmanlaw.com>, Cheryl Robinson <cheryl.robinson@feroletolaw.com>

Hi Paul,

Attached is the proposed order for the recent motion to compel. Please review and advise before June 27 so that the order can be forwarded to the court. Thank you.

Sincerely,

Jill Wnek

[Quoted text hidden]

Jill Wnek

Feroletto Law

438 Main Street, Suite 910

Buffalo, New York 14202

Tel.: (716) 854-0700 Fax: (716) 229-4613

jill.wnek@feroletolaw.com

www.yourbuffalolawyer.com

www.newyorktrucklawyer.com



A referral is our greatest compliment. If you know someone in need of our services, please let us know.

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MTC Order (Proposed).doc

29K

Paul G. Joyce <PJoyce@colucci-gallaher.com>

Mon, Jun 27, 2022 at 9:19 AM

To: Jill Wnek <jill.wnek@feroletolaw.com>, John Feroletto <john.feroletto@feroletolaw.com>

Cc: Brittany Hannah <bhannah@sugarmanlaw.com>, Cheryl Robinson <cheryl.robinson@feroletolaw.com>, Marc Smith <msmith@colucci-gallaher.com>, Jennifer Albrecht <jalbrecht@colucci-gallaher.com>

Thanks Jill. Please revise the order to identify the specific officers in the "Ordered" paragraph.

As for depositions, I think it would be better for any individual officers that the Plaintiff is going to name as a defendant be added and appear before we take depositions. If not, then we'll be having multiple depositions of the same individuals, including the Plaintiff. I suggest that we ask Kristin for a conference so we can get a scheduling order in place to (1) identify the late date to name parties, and (2) identify dates for discovery. If you want to prepare a draft scheduling order (or would like me to draft one), that would be helpful to everyone.

Thanks,

JOHN P. FEROLETO
CARRIE A. ZIMBARDI
JILL WNEK

FEROLETO

INJURY ATTORNEYS

PARALEGALS
MOLLY VERA
NICOLE DALTON
CHERYL ROBINSON

JOEL FEROLETO
of Counsel

June 28, 2022

VIA REGULAR MAIL & E-MAIL: P.Joyce@colucci-gallagher.com

Paul G. Joyce, Esq.
COLUCCI & GALLAHER, P.C.
2000 Liberty Building
424 Main Street
Buffalo, New York 14202

**RE: Martin v. Town of Tonawanda Police Department, et al.
Index No.: 808523/2021**

Dear Paul,

Thank you for your email to attorney Jill Wnek.

The proposed order is cut and pasted directly from Justice Panepinto's email to us and accurately reflects the Judge's decision.

I don't know which TPD personnel had disciplinary hearings as a result of the Eric Martin matter. As such, discovery as to other officers' disciplinary questions may well not be necessary. Please provide the disciplinary information arising from the Eric Martin matter only.

As to depositions, it is not required, nor does it make sense to Plaintiff name various TPD personnel before depositions are held. The defense does not direct the way a plaintiff prosecutes his case.

Depositions should be held soon. This will clarify issues and questions of fact. I understand your argument that TPD personnel later identified may request the deposition of Mr. Martin.

Please provide the disciplinary information at this time or advise if you have any questions.

438 MAIN STREET
SUITE 910
BUFFALO, NEW YORK 14202

PHONE: (716) 854-0700 FAX: (716) 854-0365 CELL: (716) 229-1613

*not for service

Thank you for your cooperation.

Very truly yours

JOHN FEROLETO

JPF/cr

cc: VIA E-MAIL ONLY: bhannah@sugarmanlaw.com

Brittany L. Hannah, Esq.
SUGARMAN LAW FIRM, LLP
211 W. Jefferson St.
Syracuse, NY 13202

COLUCCI & GALLAHER, P.C.

Direct Dial: (716) 853-6509
Email: pjoyce@colucci-gallaher.com

RECEIVED

July 8, 2022

JUL 11 2022

Via U.S. Mail & Email

John Feroletto, Esq.
Feroletto Law
438 Main Street, Suite 910
Buffalo, New York 14201

Re: *Martin v. The Town of Tonawanda Police Department, et al.*
Index No. 808523/2021

Dear Mr. Feroletto:

I am in receipt of your correspondence regarding scheduling depositions. I agree that the "defense does not direct the way plaintiff prosecutes this case," just as the plaintiff does not direct how the case is defended. However, under the Civil Practice Law & Rules, the defense does have priority of depositions, so you cannot unilaterally set the date.

As I have stated before, I do not think it is proper or efficient to move forward with depositions until all parties are named in the lawsuit. You previously filed a Request for Judicial Intervention seeking a conference in this matter; that conference has not occurred. As such, I will make a request to the Court for a conference so that we can meet with Ms. Wolf and have a scheduling order put in place.

Very truly yours,


Paul G. Joyce
for COLUCCI & GALLAHER, P.C.

PGJ
cc: Brittany L. Hannah, Esq.

FEROLETOLAW

John Feroletto <john.feroletto@ferolettolaw.com>

Martin

2 messages

John Feroletto <john.feroletto@ferolettolaw.com>

Mon, Jul 18, 2022 at 1:19 PM

To: "Paul G. Joyce" <pjoyce@colucci-gallagher.com>, Brittany Hannah <bhannah@sugarmanlaw.com>, Jill Wnek <jill.wnek@ferolettolaw.com>, Kristen Wolf <kwolf@nycourts.gov>, John Feroletto <john.feroletto@ferolettolaw.com>

Paul, I hope you had a good weekend.

Do I understand that you will not or may not represent Tonawanda personnel who may be named as defendants?

Please get back to me today and let me know, as I sent you nine hard copies of the Court's Order, including one for each potential defendant identified as John Doe.

John Feroletto

438 Main Street, Suite 910

Buffalo, NY 14202

716-854-0700

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Paul G. Joyce <PJoyce@colucci-gallagher.com>

Mon, Jul 18, 2022 at 1:39 PM

To: John Feroletto <john.feroletto@ferolettolaw.com>, Brittany Hannah <bhannah@sugarmanlaw.com>, Jill Wnek <jill.wnek@ferolettolaw.com>, Kristen Wolf <kwolf@nycourts.gov>

Cc: Jennifer Albrecht <jalbrecht@colucci-gallagher.com>, Marc Smith <msmith@colucci-gallagher.com>

John – As of right now, our office has not been retained to represent by any potential John Doe defendant, just the Town of Tonawanda. I won't know if we're going to represent the individuals until they are named as defendants. At that point I can contact them and let you know their decision on representation.

Paul

From: John Feroletto <john.feroletto@ferolettolaw.com>

Sent: Monday, July 18, 2022 1:20 PM

To: Paul G. Joyce <PJoyce@colucci-gallagher.com>; Brittany Hannah <bhannah@sugarmanlaw.com>; Jill Wnek <jill.wnek@ferolettolaw.com>; Kristen Wolf <kwolf@nycourts.gov>; John Feroletto <john.feroletto@ferolettolaw.com>

Subject: Martin

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Please get back to me today and let me know, as I sent you nine hard copies of the Court's Order, including one for each potential defendant identified as John Doe.



John Feroletto <john.feroletto@feroletolaw.com>

Martin

4 messages

John Feroletto <john.feroletto@feroletolaw.com>

Tue, Jul 19, 2022 at 2:22 PM

To: "Paul G. Joyce" <pjoyce@colucci-gallagher.com>, Brittany Hannah <bhannah@sugarmanlaw.com>

Paul, hopefully we can resolve some discovery issues this afternoon.

As to "strips search" documents you seem to be claiming there was no strip search. Please note the definition of documents in our request which is meant to be interpreted in the broadest possible way. Also, your client defines strip search as removal of any part of an individual's clothing. There should be a procedure, with the securing of authorization for what happened. Please provide the documents or advise if there are none that exist.

We should establish the duties of the individuals involved in the arrest. Most departments have a specific list of duties. Please see the attached List of duties of detectives and police officers for the city of Buffalo Police Department. Please provide the descriptions for the TPD or advise if none exist.

Please see my notes on your first response which provides specificity as to items which should exist. Thank You, John

John Feroletto

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Buffalo, NY 14202

716-854-0700

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2 attachments



Detective Duties - City of Buffalo.docx

33K



Def Res 11-02-21 to Omni,,VBOP &Doc Req w JPF Notes.pdf

652K

Paul G. Joyce <PJoyce@colucci-gallagher.com>

Tue, Jul 19, 2022 at 2:54 PM

To: John Feroletto <john.feroletto@feroletolaw.com>

Cc: Brittany Hannah <bhannah@sugarmanlaw.com>, Jennifer Albrecht <jalbrecht@colucci-gallagher.com>

John - NY case law that says a strip search "requires the arrestee to disrobe so that a police officer can visually inspect the person's body" (*People v Hall*, 10 NY3d 303, 306 (2008)) or when officers remove the defendant's clothing to conduct a visual examination of the defendant's body. *People v Mothersell*, 14 NY3d 358 (2010). Mr. Martin admits that he removed his basketball shorts and t-shirt but had his boxer shorts on the entire time, so under the law there is no strip search; just because you define the phrase in the broadest possible way does not mean that it encompasses something that it is not.

Even if it was a "strip search," under current law set forth by the Supreme Court in *Florence v. Bd. of Chosen Freeholders*, 566 US 318 (2012), strip searches in County Jails — including detainees removing all clothing and being visually

inspected in body cavities - are constitutional. Please state why the Town's policy was unconstitutional.

You said you want Valint's deposition to see who directed him to conduct the "strip search" and may want to depose that individual too, and at some point after that you'll consider naming the John Doe defendants. Since the issues you want depositions for are 1983 claims, they can only be asserted against an individual. I'm not sure why you want the Town to produce a potential defendant for deposition that you are likely going to name as a defendant on an issue where the Town did not violate a constitutional right.

As for the officers duties, I will see if there is a responsive document to your request. I'll also review your notes and send you a list of topics that I believe need to be addressed by the plaintiff.

We can have our call once I get you the list of issues and you review the controlling caselaw to explain why you believe this is a constitutional violation. I'll be sending out a response to your correspondence shortly. Thanks,

Paul

From: John Feroletto <john.feroletto@ferolettolaw.com>

Sent: Tuesday, July 19, 2022 2:22 PM

To: Paul G. Joyce <PJoyce@colucci-gallaher.com>; Brittany Hannah <bhannah@sugarmanlaw.com>

Subject: Martin

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We should establish the duties of the individuals involved in the arrest. Most departments have a specific list of duties. Please see the attached List of duties of detectives and police officers for the city of Buffalo Police Department. Please provide the descriptions for the TPD or advise if none exist.

Please see my notes on your first response which provides specificity as to items which should exist. Thank You, John

John Feroletto



John Feroletto <john.feroletto@ferolettolaw.com>

Martin

1 message

John Feroletto <john.feroletto@ferolettolaw.com>

Thu, Jul 21, 2022 at 1:32 PM

To: "Paul G. Joyce" <pjoyce@colucci-gallaher.com>, Brittany Hannah <bhannah@sugarmanlaw.com>, John Feroletto <john.feroletto@ferolettolaw.com>

Paul, thank you for your July 19, 2020 email.

Sometimes I may not make myself clear. To the extent you paraphrased our conversation, in your July 19 email, I intend to take the testimony of Ofc. VALINT, and the TPD personnel who authorized the strip search of Eric Martin.

Mr. Valint may or may not be named as a defendant. I do not know the involvement of the various TPD personnel at this point in time, without testimony. With factual information gained from the depositions I hope to be in a position to exclude a number of TPD personnel as potential defendants.

John Feroletto

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716-854-0700

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